IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2676 OF 2004

Mrs. Chandana M. Rege .. Petitioner
V/s.
The Principal, Ramnarain Ruia College
of Arts & Science, Mumbai & Ors. .. Respondents

Mr. P.G. Korade for the Petitioner
Ms. Meena H. Doshi for the Respondent Nos. 1 and 2.
Mr. R. Rodrigues for the Respondent No. 3
Mr. M.D. Naik, AGP. for the Respondent No. 4

CORAM : F.I. REBELLO &
S.P. KUKDAY, JJ.
DATED : 11.04.2005

P.C.:-

1. Rule. Heard forthwith. On 1.3.2005, a learned Bench of this Court had passed the following order :-

> This Petitioner is situated similar to W.P. 2675/04. In that Petition University has given a letter to the College stating that University has approved the appointment of the Petitioner Mrs. Abhyankar for earlier period on temporary basis and thereafter on probation period. We expect University to issue similar letter to the College in case of Mrs. Rege, the Petitioner herein. University will issue that letter within one week. S.O. to 15.3.2005.

2. When the matter comes up for hearing, on behalf of the University, their learned counsel refers to the affidavit filed by Dr. R.S. Munwwar Ali, Joint Director of Higher Education, Mumbai. In paragraph 4 of the said Affidavit reference is made to the Government Resolution dated 5.12.1994. It is then set out that University of Mumbai, has adopted the said Government Resolution vide circular dated 17.7.1996 but has however modified certain condition vide paragraph 6 of the Circular namely that the open category candidate working on such posts be

absorbed in the said posts. The Affidavit then sets out that this provision is contradictory to the general policy for recruitment. Absorption of such open category candidate directly results in depriving the rights of other candidates who are fully qualified but have not applied for the post as the post was earmarked for particular backward class community. Thus, Government is not in a position to regularise the candidate and the post can be advertised so that all eligible can apply and the Petitioners also can apply for the post and through open competition. There is chance for the Petitioner to get selected. It is further submitted that as the Government has not granted the permission to regularise and considering the provisions of the Maharashtra University Act, the University was not in a position to comply with the directions of this Court.

3. We have disposed of Writ Petition No. 2675 of 2004. In that case, one Mrs. Aditi A. Abhyankar was employed with the same institution as in the present case, since, 14.9.1989. That appointment was also against reserved post. The Government, in that case however has granted permission to the University, which has ultimately approved the regularisation without advertising, as can be seen from the letter dated 24.11.2004. The case of the Petitioner and Mrs. Abhyankar is similar. We see no reason as to why in the case of the Petitioner the Respondent State has sought not to exempt the post from being advertised as has been done in the case of Mrs. Abhyankar in Writ Petition No. 2675 of 2004. The fact

that the Government has granted relaxation in the case of Mrs. Abhyankar means that the condition for advertisement is not mandatory and can be relaxed. In the present case, the Petitioner has been working since 1990, Mrs. Abhyankar was working since 1989. Their cases are therefore, similar. We, therefore, see no reason as to why the Petitioner should not also be similarly regularised. As the only reason, why the University could not issue letter of regularisation, no longer subsists, the Petitioner is entitled to reliefs as prayed for.

4. The Respondent University is directed to issue letter on the same terms as in the case of Mrs. Abhyankar and Respondents 1 and 2 are directed to issue similar letter to the Petitioner as in the case of Mrs. Abhyankar in Writ Petition No. 2675 of 2004. Rule is made absolute in terms of prayer clause (a) and (b).

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)